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CS98-102

Cable Communications Agency

CITY OF INDIANAPOLIS

WCTY Government Channel 16

MEMORANDUM

TO : Whom It May Concern

FROM : Rick Maultra/Director Cable Communications Agency

DATE : 7/28/98

SUBJECT : FCC Assessment on Status of Competition on Video

We are amending the document sent by the Cable Communications Agency of the City of Indianapolis regarding the FCC's seeking of comment on the *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*. This is because a significant error took place when it was transferred from WordPerfect to Microsoft Word. Including typos, the Word version rearranged paragraphs on page two as well as omitting large pieces of language on page two.

The Cable Agency originally submitted this filing to the FCC on July 24, 1998.

The attachments that were originally submitted are still valid.

We apologize for any inconvenience.

Thank you for your kind consideration.

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming	**CS Docket No. 98-102**

July 23, 1998

To Whom it May Concern:

The Cable Communications Agency of Indianapolis would like to thank the FCC and those involved for this opportunity to file comments regarding the *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming.* As the local cable franchising authority representing nearly 200,000 cable subscribers in Indianapolis and Marion County, competition to the cable operator incumbents of Time Warner and Comcast is of paramount interest and priority for the constituency we represent. The most frequently asked questions of our office staff are *"Why can't I have a choice of cable TV providers"? "When will there be competition"? "How can you (we/FCC) allow cable rates to go up as often and as much as you do?"*

Unregulated, Comcast Increases Rates Without any Apparent Justification

The FCC is seeking information in this annual assessment on a wide range of issues. One of these issues is on programming offered on "mini-tiers" or a la carte. Under the Commission rules and the ensuing latitude that so called *Social Contracts* give the cable operator, these "mini-tiers" or a la carte program packaging become migrated product tiers (MPTs) that are unregulated. These unregulated service tiers are a good example and glimpse as to how the cable industry may behave in an unregulated environment. For example, Comcast of Indianapolis informed the Cable Agency in July that a nearly three dollar increase was coming in August for Comcast's unregulated tier *Value Pak,* (see attached news clippings and Comcast news releases). Also, that the increase would not be pro-rated on the subscribers' bill as other increases had been previous so as to make the increases 'more uniform'. This 'uniformity' also was given as a primary reason as to why Comcast raised the rates of its premium fare shortly after the first of the year in Indianapolis. A pro-rated increase based on the actual days of the billing cycle is more fair than a non-pro-rated increase. All previous increases have been pro-rated based on billing cycle. This huge increase to an unregulated tier in an uncompetitive environment seems to evidence a real sense of arrogance on behalf of the cable operator, Comcast. Is this what the FCC had in mind when it deregulated cable television?

In its reasoning to allow for a deregulated migrated product tier, the FCC said that the pricing for an MPT would be market driven. Where in any market, not subject to a cable overbuild, do you have a comparable programming service tier that would therefore contribute to market forces driving the price? We are not aware of any direct broadcast satellite (DBS) arrangement in this jurisdiction that breaks out the services of programming that Comcast offers in its MPT (Comedy Central, TBS, Romance Classics, WGN, TNT, Discovery Channel, TV Land and soon the Game Show Network). The Game Show Network was the only new channel added to this MPT (thus justifying a rate increase under the Commission rules), which doubtedly carried much weight into Comcast's programming costs in calculating the rate increase. In fact, a *Multi Channel News* article (see attached) of April 27, 1998 suggests that the Game Show Network is paying launch fees to get carriage. Let's see if we have this right: under the Commission rules an MPT is an unregulated tier, allegedly market driven. If Comcast adds a new channel to the MPT they can raise the cost of that MPT, even if they *actually received payment to carry the new channel they added to the MPT.* Seemingly, the Commission's rules would imply that a rate increase to the MPT is justified because there is a cost attached to adding new services. But the contrary appears true. In fact, most of the channels that Comcast has added to its CPST and now MPT have been linked to launch fees via the recent trade articles: Animal Planet, Game Show Network, E, Home & Garden TV, PAX-NET and Great American Country. A suggestion here would be to offset launch fees against increased programming costs when calculating rate increases.

Comcast also implemented this increase nine months following their normal, obligatory, November 1 date to implement increases for their MPT and expanded basic services tier (CPST) per Form 1240 rules. Comcast told the Cable Agency that a major part of their reasoning for an August rather than November increase was that November was election time and a November increase would be closer to the March 1999 regulation sunset date. Comcast also stated to us that DBS' major advertising tends to occur at Christmas time and Comcast didn't want to give DBS ammo for their ads by taking an increase in November.

Our concerns for deregulation are real. If this is how Comcast behaves in a monopolistic, deregulated environment, then what are we to expect from the entire cable industry after March of 1999? We believe that the FCC's rules to deregulate the MPT were a mistake. The increases are not driven or held in check by market forces. Comcast has eveidenced that it does not behave as a good actor in that spirit of deregulation. The Cable Communications Agency recommends that the March 1999 regulation sunset date be postponed indefinitely until *real effective competition* is available to all in any given cable franchising jurisdiction. We also respectfully ask the FCC to investigate cash-for carriage arrangments and how this affects everything from rate increase criteria (such as 20 cents per sub per month per new channel added) to evading the reporting of gross revenues to cities and towns. At a minimum, rate regulations should require operators to offset launch fees against programming costs in calculating rate increases.

Effective Competition Issues

The FCC asked for comments in this assessment as to whether its definitions and criteria for effective competition were acceptable, and if they were not, to suggest any possible alternatives. We would state for the record that the criteria for effective competition is not acceptable. It should be based solely on evidence of competitive pricing for the long term. As an example, where Ameritech has overbuilt incumbent cable operators in the Midwest, there has been long term evidence of prices stabilizing, price cuts, increased programming offers (free premium fare) and other benefits. (see attached *Multi Channel News* 6/29/98 page 8A/*Cable World* May 19, 1997 page 46). This is the measure of competition that should be used without adding numbers, percentages or other criteria to the equation and eliminating the possibility that the operator may artificially lower its prices over the short term in order to receive a favorable effective competition ruling from the FCC.

SBC/Ameritech Merger

In its annual assessment, the FCC has asked for comments pertaining to mergers, clustering and consolidation. If the real intent of the 1996 Telecommunications Act was to promote competition and simply not to deregulate for deregulation's sake, then those in the decision making process should vigorously oppose the proposed Ameritech/SBC merger with every fiber in their being. Ameritech's New Media cable overbuilds in the Midwest are one of the very few and very best examples of cable TV competition in the world........period. As evidenced by the attached documentation, Ameritech has stabilized cable pricing in the markets they overbuild, even forcing down pricing and forcing incumbents to skip the obligatory price increases so conveniently afforded to them via the various rate orders, social contracts and other methods of profit taking available through the FCC.

The attached documentation shows (*Cable World* May 25, 1998), SBC has exhibited no patience in operating any of its video properties in whatever form they may take, whether cable or wireless. They will be more likely than not willing to halt Ameritech's steam rolling train of cable TV franchise acquisitions. Those policy makers who would be so inclined to approve the SBC/Ameritech merger would remove the best case scenario for cable TV competition and thereby make any process such as this assessment designed to foster competition , totally beside the point. The likely resultant removal of existing competition and potential competition would be devastating following an SBC/Ameritech merger.

The jury is still apparently out as to whether cable overbuilds are indeed profitable. Certainly a few studies have been done that would indicate that they are not. If they are not, then the cable industry *is indeed a monopoly and should be regulated as such.* All studies aside, whether Ameritech does make a profit on its cable venture, may never be known publicly should the SBC/Ameritech merger be approved.

Some have argued that Ameritech is subsidizing its cable venture with its profits from its telephony platform. The Ohio and Michigan Public Utility Regulatory Commissions have decried and voted against Ameritech using promotional free telephony services as a way to sell its cable TV services. Is that not competition? Does this marketing scheme not favor the public? Are the cable companies not subsidizing their telephony platform with their cable service revenues? Let them compete! The idea is to bring out competition in cable TV and local phone services (LEC). Let the FCC tweak the details later once the competition has been established and the consumer has benefited.

Incumbent Cable Operators as Competitors

Relatively few cable TV overbuild studies have been conducted, such as those by the Strategis Group, yet they point to the notion that cable overbuilds are not profitable or have a very low return for profitability. These studies have examined Ameritech and municipal cable TV overbuilds done from the ground up. What the studies have ignored and no study has examined is the profitability of cable overbuilds that would be constructed by incumbent operators who buffer another operator and are simply extending their plant into the other's territory. Many of the economies of scale would be in place such as management, headends, staffing, marketing, programming, etc., to make this a more viable proposition as opposed to overbuilds that start from ground zero. Add to this the projected revenue to be attached to the head of each subscriber as cable offers more services, such as digital offerings, interactive services, cable modem service, etc., and one has to wonder why there are not more overbuilds.

The cable industry has successfully spun its lobbying efforts over the years protecting its piece of unsliced pie by telling policy makers and legislators that cable overbuilds are not profitable. We would counter otherwise. But should the National Cable Television Association be correct in their assessment, then the industry is a monopoly and should be regulated accordingly. Ameritech has shown that the best case scenario for true competition in the cable industry is in the form of a wireline overbuild because it represents an apples to apples comparison of services offered by the incumbent. The FCC and other policy makers should make *every effort* to initiate and legislate language that fosters more cable overbuilds as the model for competition to the cable industry in this country. It is because of this potential competition *within* the industry itself, that we strongly oppose clustering and mergers *within* the cable industry.

In Indianapolis, both cable operators have been awarded franchise territories for the entire county, which is the local franchising authority's entire jurisdiction and there are no restrictions of the cable company incumbents venturing into the other operator's territory (upon the completion of their rebuilds) but both have represented to the local franchising authority that they have no intention of overbuilding one another. There are, in essence, no barriers of regulation to keep them from competing with one another.

It may take a few years of runaway price increases after the March 1999 deregulation of the cable industry before policy makers realize they made a mistake and not only look to re-regulate the industry but also break it up as it likely eventually will resemble the pre-1984 AT&T through mergers and clustering. The framework at the FCC allows incentive for the cable industry to grab every profit taking measure available to them under the law and who's to blame them for doing so?

The Cable Industry: Cable Division Profits vs. the Overall Cash Flow of Company

The cable industry spin to policy makers is that their profits and cash flow are low. But a closer examination shows that if any given company's cash flow and profits are low, it may be due to bad business practices in non-cable related ventures. An example of this is a recent issue of Cable World which reported that Time Warner had healthy profits in their cable division but their music division was bringing down their overall cash flow. Cable subscribers should not be forced to subsidize further price increases by the cable operator making poor investments in non-cable related matters. Policy makers should be very wary of cable industry representations that their company's cash flow or profits are low when all of the cable trade magazines and industry press releases consistently show cable division profits way up.

Time Warner Rate Increases & Their Proprietary Properties

When Time Warner increases its rates, it stands to reason that they should be charging less than other cable operators since so much of the yearly, (bi-yearly, tri-yearly) programming increases are the result of increases in the very popular programming property they own. Consider that Time Warner owns Cartoon Network, CNN, CNN Headline News, TNT, TBS, Turner Classic Movies, CNNSI, CNNFN, HBO, Cinemax, etc., and it causes one to ponder whether Time Warner is double-dipping its customers. The FCC should aggressively investigate to see if they are essentially charging twice over in their rate increases and implement appropriate action to cease this behavior.

Cash for Carriage & the 20 Cents per Channel per Month Cable can Charge

The cable trade publications have been running stories recently regarding the networks that pay a cable system to carry them. Network examples from stories appearing in *MultiChannel News* include HGTV (Home & Garden Television) Animal Planet, The Game Show Network and PAX-NET, to name but a few (see attached evidence). From a municipal standpoint there is a concern that this is revenue the cable operator has not counted toward gross revenues for the franchise fee purposes. More importantly, the FCC rules allow for cable operators to charge subscribers an additional 20 cents a month for each channel that is added on to their system. It is anyone's guess as to how many millions of dollars the cable operators were able to derive from these FCC rules when there are obviously circumstances in which the operator was already receiving compensation from the network for carriage. The Cable Agency would suggest that this is further evidence of the tremendous (and generous) latitude that is afforded to the cable industry by the FCC regarding rate charges to the consumer and that the issue be aggressively investigated.

PEG Access in Indianapolis

This annual assessment seeks information regarding PEG access channels, the number of channels being used and the types of programming included. In Indianapolis we have three access channels: 'P', features public safety programming and also serves as the spillover for the Educational Access Channel ('E'). The 'G' Channel, the Government Access Channel serves the community as a local version of C-SPAN. The 'P' channel features many law enforcement and public safety programs produced by both the government access facilities and the fire department. Some of the programs feature public safety awareness, documentaries, training, award ceremonies, and the like. There are also plans to carry the Indianapolis Public School (IPS) Board meetings on this channel, which has been widely endorsed in editorials in *The Indianapolis Star* newspaper. The 'E' channel features programming produced by the various city, township schools and colleges in Marion County. These also include a homework hotline and other live call in programs. The 'G' channel features many governmental meetings and allows public accessibility to them. These include the City-County Council, the Metropolitan Development Commission, four different Zoning Boards, Council Committee Meetings, Liquor Board, Air Pollution Board and Neighborhood Associations to name just a few. There are interactive bulletin boards on the same channel seen every six hours that inform the community on such topics as road work. There are live call in programs with elected officials, charitable organizations and a myriad of other topics.

Comcast Launches Digital Services in Indianapolis/Cable Modem Service Mid 1999

The annual assessment requests information regarding digital tiers by cable operators. On July 6th, Comcast of Indianapolis provided customers the option of renting a digital terminal that offers 24 screens of premium channels, 38 pay-per-view channels, 40 channels of uninterrupted music and an interactive on-screen guide. The digital terminal is available for an additional $9.95 per month. Not mentioned in their news release regarding this matter (see attached) but represented to our office by Comcast was the fact that if a customer already has HBO and they lease the digital terminal, they will receive additional HBO premium channels at no cost. If the subscriber already has Showtime, they will also receive The Movie Channel, if that subscriber decides to rent the digital terminal. 184 channels will be available on the system in total. The digital tier is available to those who are currently upgraded, which at the time of the news release (June 30, 1998) is 70% of 149,000 subscribers in Central Indiana (not just exclusive to Indianapolis and Marion County).

Comcast also represented that they plan on launching cable modem service in this market by mid-1999. It is noteworthy that Comcast is one year ahead of their original rebuild plans (and those required under the franchise agreement) and they will be finished with their fiber optic upgrade by the end of 1998. The annual assessment was seeking these approximate launch dates of new services such as cable modem offerings.

ESPN Should be Added to Migrated Product Tier

With the increasing costs to ESPN, especially in light of a recently signed programming contract with the National Football League (NFL), we recommend that ESPN be offered on migrated product tiers on cable systems. This would provide a few benefits. First, it would allow a popular, albeit expensive, programming service to be grouped with other popular programming services which are treated as a la carte or premium services. Those who have no preference for sports in general would not have to be compelled in taking ESPN with their expanded basic or limited basic cable. Additionally, ESPN has stood the test of time as a popular cable programming service for CPST and therefore can stand alone in an a la carte setting and thrive there based on its previous success. The FCC sought comment regarding ESPN in this 1998 annual assessment.

Exclusive Video Service Contracts in Multi Dwelling Units (MDUs)

The annual assessment sought comment regarding the increase or decrease of exclusive video service contracts in multi dwelling units (MDUs). We would represent that this has been an on-going problem in our community. As long as private land owners and their landlords can receive compensation from the video service provider, then exclusive, non-competitive contracts will continue to be signed. From our perspective, where a SMATV (Satellite Master Antenna Television) has entered into a contract with the MDU landlord and is providing service, we have found that service to be far inferior to cable TV offerings from a technical, pricing, maintenance and programming standpoint. Invariably, customers with MDU SMATVs have to wait an inordinate amount of time to receive assistance on maintenance and reception problems. The MDU SMATV offers a limited amount of programming (25-40 channels) and the price is always reported higher to us than cable offerings in Marion County.

Representing the cable TV customers of Indianapolis and Marion County, we kindly ask that you give due consideration to the comments contained herein that are representative of the consumer feedback we have received.

Respectfully submitted,

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